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Appl. Number: 10/684,312

REMARKS

Claim 1 has been amended herewith to better set forth aspects of Applicant's invention. For practical reasons, claims 10, 11 and 12 have been amended to now depend from claim 14. Care has been exercised to ensure that no new matter has been introduced. The Examiner's remarks in the Office Action have been carefully considered and the following remarks are made as a complete response thereto.

In the recent Action, no indication was provided as to the status of the drawings. Applicant assumes that the drawings are acceptable in their current form.

REJECTIONS UNDER 35 USC 102(b)

On page 2 of the recent Action, claims 1-7 and 14-16 were rejected as being anticipated by U.S. Patent 4,624,238 to Hait (hereinafter referred to as 'Hait'.) Applicant respectfully traverses the rejection.

As amended, independent claim 1 recites a "...plurality of panels forming sides of the frame when the frame is erected, wherein a side of the frame comprises a variable configuration of panels, the configuration being selected by a user of the device to adjust an attribute of the enclosure when the device is in use for heating, the attribute including at least one of: how much of the side is enclosed, which portion of the side is enclosed, a volume substantially enclosed by the frame and an overall shape of the frame."

Hait fails to teach or suggest any manner in which panels for sides of the frame may be selectively configured by a user such that, when the unit is in use, an attribute of the erected enclosure is selectively controlled by the user to render the unit suitable and adaptable for different types of uses.

Hait fails to teach or suggest any manner in which a frame comprises a variable configuration of panels in which the user may control how much of a side of the frame is enclosed. Hait lacks any teaching that the erected heating apparatus be operated with certain ones of panels 32, 42, 90, being removable, alterable or positionable so as to leave a portion of the side of the enclosure opened. Instead, according to Hait, these panels are hingedly attached to one another in a permanent fashion, so there is no teaching or

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suggestion of user being able to configure the panels of the device to vary how much of a side is enclosed.

Hait fails to teach or suggest any manner in which a selectable configuration of panels may be used to vary which portion of a side is enclosed, or the position at which a side of the enclosure may be opened. In contrast, Applicant's Figures 3, 4 and 5 clearly depict at least three different selectable configurations wherein a side of the frame forming the heating enclosure may be configured to create openings in the side varying in both size and position and allowing for great flexibility in adapting the heating unit for various purposes.

Hait fails to teach or suggest any manner in which a configuration of panels forming sides of the frame may be selected by user to adjust the volume that is substantially enclosed by the frame. Hait also fails to teach or describe any manner of variable configuration allowing for varying the shape of the erect structure. The apparatus taught by Hait, when erected, results in a fixed shape and size of the enclosed space which houses a heat source and suspends a grilling surface or the like above the heat source. In contrast, Applicant (at least at paragraph 0037) describes a manner in which panels may be used in various configurations to alter the volume, shape and configuration of the enclosed space.

Applicant also respectfully points out an important contradiction in the remarks describing the rejection. The remarks on page 2 of the recent Action indicate Applicant's recited "collapsible frame" as being met by reference numeral 15 of Hait, then proceed to compare Applicant's recited "plurality of panels" with elements 42, 32 and 90 of Hait. In accordance with Applicant's claims, the "collapsible frame" is to comprise the "plurality of panels". Yet, in Hait, elements 42, 32 and 90 relate to an entirely different part of the structure than element 15 and, hence, element 15 of Hait cannot be said to comprise elements 42, 32, 90. In light of the foregoing arguments, independent claim 1 is not anticipated by Hait. Applicant respectfully requests reconsideration and allowance of claim 1.

Apparently commenting with respect to claim 2, the remarks in the Action contend that panels 32a and 42a of Hait fulfill Applicant's recitation relating to first and second panels being detachably coupled to one another in the course of erecting the

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frame. Yet, with respect to claim 3, the Action then argues that these same panels also fulfill Applicant's recitation related to the panels being "detachably coupled substantially along their adjacent edges." This characterization is inaccurate because, as shown in FIG. 6 of Hait, panels 32a and 42a do not meet at their edges. Instead, the edge of panel 32a butts into the side of panel 42a as element 24 nests into element 22 and rests there under the influence of gravity.

Aside from these points, claims 2 and 3 are also allowable at least by virtue of their dependency from claim 1, which has been demonstrated to be allowable by the arguments presented above. Applicant respectfully requests reconsideration and allowance of claims 2 and 3 on these grounds.

As a practical matter, Applicant notes that the 'streaming' form of the remarks in the rejection causes ambiguity in mapping of grounds of rejection to specific claims, causes ambiguity in verifying the Office's understanding of the correct logical relationships of Applicant's recitations and leads to very loose or inaccurate quotations of Applicant's recitations. Where practical, Applicant would appreciate rejections addressing particular claims by number and in keeping with the guidelines expressed in MPEP 707.07(d) and MPEP 706.02(i). Applicant's current response is based on what is inferred from the language of the rejection.

Where the Action recites "selectively positionable or employable having particular dimension attributes" Applicant assumes the Action is referring to claims 4 and 5, though Applicant would argue that this is a misquotation of Applicant's claims which obscures the intended meaning that should have been given patentable weight. Nevertheless, Applicant interprets the Action to say that these attributes are allegedly disclosed by Hait at column 3 lines 67-68. Actually, this passage of Hait merely refers to the formation of a hollow, truncated pyramid which is open at its larger and its smaller end as the unit is erected for use. This passage fails to teach or suggest the selectivity exercised by a user by employing a panel having a particular physical dimension by which the user may affect an attribute, such as how much of a side is enclosed, by selecting of the panel based on its particular physical dimension. Applicant's recitations of "selectively configured by selectively employing" and of the "physical dimension that affects the attribute of the enclosure" must be given patentable weight. The mere fact

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that a fixed arrangement as taught by Hait in column 3 has dimensions of some nature is insufficient to fulfill Applicant's claims selected employment of a particular panel from among a plurality of panels based on the panel having a particular physical dimension that affects an attribute of the enclosure. This passage in Hait merely refers to the formation of a truncated pyramid when the unit is erected, the pyramid having fixed dimensions that are not subject to user control. Hait teaches a fixed arrangement in which the user cannot choose to selectively include or exclude a given panel to change the shape or size of the truncated pyramid or any side thereof. Therefore, Hait lacks any teaching of a selective positioning or selective employment of particular panels as recited in Applicant's claims. In addressing claims 1, 4-6, and 8-12, the Action seems to overlook the many clear recitations in Applicant's claims related to user selectivity that is absent in the cited references, yet this selectivity in the attributes of a side of an enclosure, and the advantage thereof, is abundantly described by Applicant.

With respect to claim 6, as best as can be determined from the language of the rejection, the recitation related to different panels that may optionally be employed to construct a side of the frame having different measurements along a dimension is supposedly met by Hait at column 4 line 7. This passage of Hait merely states that "The panels 42a-42d of the firebox 24 are trapezoidal in configuration." This passage of Hait has no relevance to different panels of different dimensions that may be interchanged in the formation of the side of the frame in order for the user to selectively configure an attribute of the side of the frame. Consequently, claim 6 is not anticipated by Hait. Furthermore, as claim 6 depends from independent claim 1, claim 6 is allowable at least by virtue of including limitations from claim 1 which render it allowable for reasons described above. Applicant's claim 7, depending from claim 6, is allowable for the same reasons that claims 1 and 6 are allowable. Claims 7 adds the limitation that the dimension by which the user may select a panel would be measured along a substantially vertical direction. Applicant respectfully requests reconsideration and withdrawal of the rejection of claims 6-7.

As to the rejection of claims 14-16, Applicant is perplexed by the Action's characterization of the vertically disposed 'legs' 14 of Hait as meeting Applicant's recited 'transverse member', especially considering that Applicant's frame is clearly described as

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providing support for the transverse member. As the Action seeks to compare Applicant's frame to elements 32, 42 and 90 of Hait, element 14 of Hait cannot possibly meet Applicant's recitation of a transverse member supported by the frame. This contradiction is only made worse as the Action, presumably referring to claim 16, then states that element 14 of Hait performs at least one of maintaining the shape of the frame, improving rigidity of the frame and holding in place the panels that form the frame. In Hait, the 'leg' 14 is not able to perform any of these functions. Further, with respect to Applicant's claim 15, leg element 14 of Hait is not shown to be coupled to elements 32, 42 and 90 of Hait at all.

Consequently, none of claims 14, 15 and 16 are anticipated by Hait by any reasonable interpretation. Applicant respectfully request reconsideration and withdrawal of the rejection of these claims for these reasons and by virtue of their dependency from claim 1.

#### REJECTIONS UNDER 35 U.S.C. 103(a)

In the recent Office Action, claims 8-13 were rejected as being unpatentable over Hait in view of Bach (US 6,439,225). (Claims 10-12 as presently amended now depend from claim 14 for practical reasons but maintain similar scope as before. The remarks in the Action and Applicant's comments remain applicable.) Applicant traverses these rejections by the following arguments.

Bach lacks any teaching or suggestion of Applicant's recited "...plurality of panels forming sides of the frame when the frame is erected, wherein a side of the frame comprises a variable configuration of panels, the configuration being selected by a user of the device to adjust an attribute of the enclosure when the device is in use for heating, the attribute including at least one of: how much of the side is enclosed, which portion of the side is enclosed, a volume substantially enclosed by the frame and an overall shape of the frame." The apparatus of Bach is either collapsed for storage and transport or is deployed at a fixed height when in use, with all panels installed. Bach lacks any teaching or suggestion that the apparatus be operated without certain of the panels, that panels having different heights be selectively employed, nor that any portion of any side of the

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deployed unit may be selectively configured to adjust the degree of closure of the side or the position at which the side is closed or open.

With respect to the combining of Hait and Bach, these references lack any of the requisite teaching, motivation or suggestion to be combined. Indeed, Applicant contends that one of ordinary skill, even in view of both disclosures, would not foresee or comprehend any useful manner in which these teachings could be combined nor be able to predict what the resultant combination would look like or how it would work.

Applicant further contends that any resultant combination would still fail to meet all of Applicant's limitations, for example, in terms of the ability for a user to selectively configure a side of the heating enclosure. One of ordinary skill would not even recognize the desirability of having a variable configuration of a side of a frame from these references alone or in combination. Consequently, there would be no reasonable expectation of success in the combination without first appreciating the goal of providing for a user selectable 'in use' configuration of a side of an enclosure, which only arises in Applicant's disclosure. For all of these reasons, the remarks in the action and the references fail to establish a case of *prima facie* obviousness.

The cited passage of Bach (col 8, lines 5-49) refers to a screen that may be either folded up for storage inside the unit when the unit is not in use or may be unfolded and disposed between the top cover member and bottom base member when the unit is in use. No other alternative or intermediate 'in-use' configuration is taught or suggested by Bach. Indeed, the remarks in the Action state "...considered disclosed in Bach for the purpose of permitting panel removal and separate storage..." The mere fact that the panels can be folded for storage or unfolded to fit into the unit when in use, does not provide the advantages of Applicant's claimed aspects of being able to vary such attributes as the degree and position of closure of a side of the enclosure when the heating unit is in use.

Accordingly, claims 8-13 are allowable because the Hait and Bach references relied upon do not establish a *prima facie* case of obviousness. Applicant respectfully requests reconsideration and withdrawal of the rejection of claims 8-13.

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CONCLUSION

Applicant respectfully requests that the Examiner reconsider all presently outstanding objections and rejections and that they be withdrawn. Applicants believe that a full and complete response has been made to the recent Office Action, as such, the present application should be considered for allowance. If the Examiner believes for any reason that personal communication will expedite prosecution of this application, the Examiner is invited to telephone the undersigned at the number provided.  
Prompt and favorable consideration of this Amendment is respectfully requested.

Respectfully submitted,



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